

LEASE AGREEMENT

This Lease Agreement is made this ____ day of _____, 1999,
between General Electric Company, a New York corporation having a place of business
at 100 Woodlawn Avenue, Pittsfield, Massachusetts (“GE” or “Lessor”), and the City of
Pittsfield (the “City” or “Lessee”), a Massachusetts municipal corporation, with a place
of business at 70 Allen Street, Pittsfield, Massachusetts.

PRELIMINARY STATEMENT

1. Pursuant to the Definitive Economic Development Agreement between
GE, the City, and the Pittsfield Economic Development Authority of even date herewith
(the “Definitive Economic Development Agreement”), the City desires to lease certain
GE property in the 60s Complex, so-called, on which GE shall, no later than June 30,
2000 (or as soon as practicable after the Definitive Economic Development Agreement is
effective), remediate said property and subsequently construct athletic fields and related
facilities thereupon, as described in Attachment C to the Definitive Economic
Development Agreement. The property subject to this Lease Agreement is described in
Exhibit 1 attached hereto and made a part hereof (the “Leased Property”).

2. GE desires to lease the Leased Property to the City, and the parties agree
to grant and receive certain indemnities and other consideration as described herein.

AGREEMENT

Now therefore, in consideration of the mutual promises contained herein, the
parties agree as follows:

1. *The Leased Property.* Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, for the term specified in Paragraph 2 below and for the consideration specified in Paragraph 3 below, the Leased Property.

2. *Term of the Lease Agreement.* This Lease Agreement is effective as of the date of execution and shall continue in force for a term of ninety-nine (99) years unless terminated sooner as provided in Paragraphs 13, 14 or 15 below.

3. *Consideration.* Lessee may use the Leased Property rent free, but only in accord with the terms and conditions of this Lease Agreement. The parties agree and stipulate that one dollar (\$1.00) paid herein by Lessee to Lessor and other good and valuable consideration as set forth in the Definitive Economic Development Agreement provide valuable consideration for use of the Leased Property.

4. *Remedial Standard.* Prior to Lessor making the Leased Property available to Lessee, Lessor shall conduct remediation activities to meet the performance standard set forth in Performance Standard No. 3 in Section 2.2.2 of the Statement of Work for Remedial Activities Outside the River (the "SOW") attached to the Consent Decree in United States, et al. v. General Elec. Co., No. ____ (D. Mass.) ("the Consent Decree").

5. *Use of the Leased Property.* Lessee shall use the Leased Property only for the following purposes and for any other purposes agreed to in writing by Lessor (all uses by Lessee shall be subject to and in accordance with any applicable Grant of Environmental Restriction and Easement (ERE) to which the Leased Property is subject):

- a) playing fields for sports activities, including, but not limited to, baseball, tennis, soccer, football, and field hockey;

- b) facilities for other recreational activities as such activities are defined under G.L. c. 21, § 17C, including, but not limited to, walking, running, roller skating, and bicycling;
- c) associated structures and facilities, including, but not limited to, baseball backstops, goals, stadium or bench seating, rest rooms, flag staffs, equipment storage facilities, and maintenance facilities; and
- d) landscaping, monuments, benches, seating areas, and fencing.

In determining whether to give written consent for uses other than those specifically listed in this paragraph, Lessor shall act reasonably.

6. *Access.*

a) Lessor and its servants, agents, employees, and contractors may, from time to time, enter upon the Leased Property to perform Remediation Work with vehicles, machinery, and equipment. For the purposes of this Lease Agreement, "Remediation Work" shall include any and all response actions on or related to the Leased Property required by the Consent Decree and the SOW, as well as all relevant work plans developed and/or implemented pursuant thereto. Lessee shall not interfere with, impair, or disturb any work or remediation done on the Leased Property or on any access routes and shall ensure that its employees, contractors, subcontractors, guests, invitees, and visitors, and the City will use its best efforts to ensure that members of the general public or any party who may use the Leased Property while the City is the Lessee under this Agreement shall do the same. Lessee shall notify Lessor as soon as practicable if Lessee, its employees, contractors, subcontractors, guests, invitees, visitors, or members of the general public or any party who may use the Leased Property while the City is the Lessee

under this Agreement in any way impair or disturb any such work or remediation, including without limitation any protective cap, soil cover or other protection put in place by Lessor.

b) Lessee shall provide to the United States and the Commonwealth of Massachusetts and their servants, agents, employees, and contractors, access to the Leased Property to the same extent that Lessor would be required under the Consent Decree to provide such access had the property not been leased to Lessee.

7. *Maintenance.* Lessee agrees to maintain the structures and facilities, to mow and appropriately mark the playing fields, and to maintain any landscaping reasonably agreed to by Lessor on the Leased Property. Lessor shall maintain any ongoing groundwater and/or NAPL treatment, recovery, and/or management system implemented under the Consent Decree and SOW on the Leased Property. Lessee shall maintain any protective cap, soil cover or other protection put in place by Lessor on the Leased Property; provided, however, that Lessor shall be responsible for repairs to any protective cap, soil cover or other protection required under the Consent Decree and SOW which are not related to maintenance .

8. *Environmental Restriction and Easements.* Lessee shall abide by and shall ensure compliance by its employees, contractors, subcontractors, guests, invitees, and visitors, and use its best efforts to ensure compliance by members of the general public or any party who may use the Leased Property while the City is the Lessee under this Agreement with any EREs to which the Leased Property is subject. Lessee's rights to the Leased Property shall be subordinate to any EREs on the Leased Property.

9. *Ownership of Improvements.* All structures and facilities installed by Lessee or directed to be installed by Lessee upon the Leased Property, including, but not limited to, baseball backstops, fencing, goals, benches, stadium seating, rest rooms, fountains, walkways, and other fixtures and improvements shall be and remain the personal property of Lessee during the term of the Lease Agreement. Upon expiration or earlier termination of this Lease Agreement, title to the improvements shall remain vested in Lessee unless the improvement is a structure that is affixed to the Leased Property. Title to structures that are affixed to the Leased Property shall vest in Lessor upon expiration or termination of the Lease Agreement without notice or execution of further instruments. At Lessor's request, Lessee shall at the expiration or Lessee's termination of this Lease Agreement under Paragraph 13, 14 or 15 below remove all Lessee's personal property from the Leased Property, including any structures or fixtures constructed by Lessee. If requested by Lessor, Lessee shall promptly execute and acknowledge a release deed or other documentation required by Lessor to acknowledge the provisions of this Paragraph.

10. *Release.* Except as provided otherwise in this Lease Agreement, Lessee permanently and completely waives, releases, and discharges, and provides to Lessor a covenant not to sue or to take other action against Lessor regarding, all claims and causes of action of any type that are brought after Lessor has achieved Performance Standard No. 3 set forth in Section 2.2.2 of the SOW, whether past, present, or future, whether known or unknown, asserted or unasserted that it may have against Lessor, its predecessors, successors, assigns, parent companies, subsidiaries, affiliated companies and other related entities, and the officers, directors, employees, agents, attorneys and

representatives of any of them, with respect to or arising out of or relating to the Leased Property, including, without limitation, claims for contribution arising from common law, claims for interference with quiet enjoyment or loss of use or statutory claims brought by Lessee or by any third party, and claims under the Massachusetts Contingency Plan, M.G.L. c. 21E, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C.A. §§9601 et seq., or other environmental laws or regulations. Notwithstanding this provision, Lessee does not by this Agreement release Lessor for any claims for damages to or from property other than the Leased Property or claims arising out of or related to waste materials that migrated from the Leased Property.

11. *Indemnification.*

a) *Indemnification of Lessee by Lessor.* Lessor shall indemnify, defend, and hold harmless Lessee, its officials, employees, servants, agents, attorneys, designated volunteers, independent contractors, lessees, successors, and assigns from and against any and all costs, claims, liabilities, damages, expenses, causes of action, suits, and/or judgments asserted by or on behalf of any person or persons, state or public agency, firm or firms, corporation or corporations, including damages, loss, or destruction to the Leased Property or any other property owned by Lessee located on the Leased Property, caused by Lessor's performance of any Remediation Work undertaken by it on the Leased Property subsequent to the execution of this Lease Agreement, or by any breach of this Lease Agreement by Lessor. This indemnity shall include, without limitation: (i) reimbursement of reasonable legal and consulting fees; (ii) reasonable costs of any Remediation Work necessary to comply with the Consent Decree and SOW; and (iii) reasonable costs of restoring the Leased Property as may be required in any relevant

access agreement. Notwithstanding the foregoing, Lessor shall not be obligated to indemnify, defend, release, or otherwise hold harmless Lessee if the proximate cause of any damage, loss, or destruction is the negligent act or omission or the willful misconduct of Lessee, its officials, employees, servants, agents, attorneys, designated volunteers, independent contractors, lessees, successors, or assigns, or of any person or entity for whose actions Lessee is legally responsible.

b) *Indemnification of Lessor by Lessee.* Lessee shall indemnify, defend, and hold harmless Lessor, its officers, employees, servants, agents, attorneys, designated volunteers, independent contractors, lessees, successors, and assigns from and against any and all costs, claims, liabilities, damages, expenses, causes of action, suits, and/or judgments, including, without limitation, claims of loss of use and/or interference with quiet enjoyment, asserted by or on behalf of any person or persons, state or public agency, firm or firms, corporation or corporations, caused by, arising out of, or resulting from use of or ingress to or egress from the Leased Property by Lessee, its employees, contractors, subcontractors, guests, invitees, and/or visitors, any failure of Lessee to act, or the construction or maintenance of improvements on the Leased Property by or on behalf of Lessee, whether permitted by or in breach of this Lease Agreement. This indemnity shall include, without limitation: (i) reimbursement of reasonable legal and consulting fees, (ii) reasonable costs of restoring the Leased Property to a condition reasonably comparable to the condition of the Leased Property at the time of the inception of this Lease Agreement, including without limitation removing any improvements if Lessor reasonably requests, normal wear and tear excepted, and (iii) additional removal and remedial requirements on or related to the Leased Property as a

result of additional work required or performed by Lessee or any third party at the direction of Lessee. Notwithstanding the foregoing, Lessee shall not be obligated to indemnify, defend, release or otherwise hold harmless Lessor to the extent that (i) the proximate cause of any destruction, loss, or damage is the negligent act or omission or the willful misconduct of Lessor, its officers, employees, servants, agents, attorneys, designated volunteers, independent contractors, lessees, successors, or assigns subsequent to the execution of this Lease Agreement, or of any person or entity for whose actions Lessor is legally responsible subsequent to the execution of this Lease Agreement; or (ii) the claim arises from Lessor's performance of any Remediation Work or any other action undertaken by it on the Leased Property subsequent to the execution of the Lease Agreement.

c) Each party shall give notice to the other of any matter that could give rise to the right of indemnification under subparagraph a) or b) hereof. Such notice shall be given within a reasonable time after the party giving notice receives actual knowledge of such matter and shall specify, to the best of such party's ability, the facts known to such party that could give rise to the right of indemnification. In the event one party fails to comply with the notice provisions of this subparagraph, and as a result of such failure the other party is materially prejudiced, that party shall have no obligation to indemnify under subparagraph a) or b) hereof.

12. *Lessee's Liability Insurance.* Lessee shall maintain with respect to the Leased Property comprehensive public liability insurance with coverage limits of at least one million dollars (\$1,000,000.00) per occurrence and annual aggregate limits of at least five million dollars (\$5,000,000.00) with responsible companies qualified to do business

in the Commonwealth of Massachusetts and in good standing therein. Said policies shall insure Lessor and Lessee against injury to persons or property with Lessor being an additionally named insured. Lessee shall provide Lessor with certificates of insurance for such policies. Such certificates shall provide that the policies shall not be canceled without at least ten (10) days prior written notice to each insured named within.

13. *Default and Termination by Lessor.* In the event that Lessee shall default in the observance or performance of any of the material obligations of Lessee hereunder, and the default shall not be corrected within ninety (90) days after written notice thereof, Lessor shall have the right, while such default continues, to enter and take possession of the Leased Property, to declare the term of this Lease Agreement ended, and to remove the personal property of Lessee, without prejudice to other remedies available to Lessor.

14. *Election by Lessee to Terminate.* In the event Lessee for any reason, within its sole discretion, elects to terminate this Lease Agreement, then Lessee shall provide Lessor with thirty (30) days prior notice of the termination of the Lease Agreement. Upon termination, the provisions of Paragraph 9 of this Lease Agreement regarding ownership and removal of Lessee's property shall apply.

15. *Taking By Eminent Domain.* All payments for damages or injury to the Leased Property for any taking by eminent domain by any federal, state, or other authority (other than Lessee), except damages for Lessee's personal property, fixtures, and equipment shall be allocated as follows:

a) to the Lessor, the present value of the right to receive rent after expiration of the term of the Lease Agreement and without the presence of any

improvements made to the Leased Property, whether the improvements were made by Lessee or by Lessor; and

b) the balance of the award to Lessee.

16. *Notices.* Except for any notice required by law to be given in another manner, all notices, waivers, demands, or other communications required or permitted by this Lease Agreement to be effective shall be in writing, properly addressed, and shall be given by: (i) personal delivery; (ii) established, overnight, commercial courier delivery with charges prepaid or duly charged by the sender; or (iii) registered or certified mail, return receipt requested, first class, postage prepaid as follows:

To the City of Pittsfield:

The Mayor of Pittsfield
City Hall, 70 Allen Street
Pittsfield, MA 01201

with a copy to:

The City Solicitor
City Hall, 70 Allen Street
Pittsfield, MA 01201

To General Electric Company:

The Manager
Pittsfield/Housatonic Remediation Programs
100 Woodlawn Avenue
Pittsfield, MA 01201

or to any other address or addressee that any party entitled to receive notice under this Lease Agreement shall designate from time to time, in the manner provided in this section for the service of notice.

17. *Assignment and Subletting.* This Lease Agreement and all rights or obligations under this Lease Agreement, including without limitation, the rights to

enforce the provisions of this Lease Agreement, may not be assigned in whole or in part by either party without the express written consent of the other party. Lessee may sublet in whole or in part any portion of the Leased Property only with Lessor's prior written consent.

18. *Amendments.* This Lease Agreement may not be amended, except by a mutual agreement in writing of Lessee and Lessor.

19. *Applicable Law and Related Matters.* All questions with respect to the construction of this Lease Agreement and the rights and liabilities of the parties thereunder shall be determined in accordance with the laws of the Commonwealth of Massachusetts. The parties agree that, to the extent possible, the federal and/or state courts of the Commonwealth of Massachusetts shall have jurisdiction over any litigation entered into in connection with this Lease Agreement.

20. *Validity.* Should any provision of this Lease Agreement be declared or be determined by any court of competent jurisdiction to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected thereby and said illegal or invalid part, term, or provision shall be deemed not to be a part of this Lease Agreement.

21. *Headings.* The headings appearing in this Lease Agreement are intended for convenience and reference only, and are not to be considered in the construction thereof.

22. *Construction.* This Lease Agreement shall be considered the joint workproduct of both parties hereto, and shall not be construed against either party by reason thereof.

23. *Sealed Instrument.* This Lease Agreement shall be and have the effect of a sealed instrument.

24. *Counterparts.* This Lease Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument, and shall have the same force and effect as though all of the parties had executed a single signature page.

25. This Lease Agreement represents the entire agreement of the parties, and may not be supplemented or modified by any statement, act or omission not reflected in this Lease Agreement. This Lease Agreement may be modified only in writing signed by all parties. The parties have been represented by counsel in the negotiation of this Lease Agreement and have participated jointly in its drafting. This Lease Agreement shall not be construed in favor of or against any party as the drafter or by virtue of any rule of contract construction. This Lease Agreement consolidates, integrates and supersedes all prior and contemporaneous representations, negotiations, and agreements, written or oral, made with respect to the subject matters of this Lease Agreement. The parties acknowledge they have read this Lease Agreement and rely on no representations whatsoever, except those contained in this Lease Agreement.

IN WITNESS WHEREOF, Lessee and Lessor have executed and sealed this
Lease Agreement as of the date first set forth above.

Witness:

City of Pittsfield

By: _____
Gerald S. Doyle, Jr.
Mayor of the City of Pittsfield

Witness:

General Electric Company

By: _____
Title:

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EXHIBIT 1

DESCRIPTION OF THE LEASED PROPERTY